Tan Kheng Pang v Superintendent of Land & Survey and another matter

HIGH COURT (KUCHING) — LAND REFERENCE NOS 15–3 OF 2007–III AND 15–4 OF 2007–I
RAVINTHRAN JC
26 JANUARY 2010

Land Law — Acquisition of land — Award — Appeal against compensation award — Method of valuation — Whether valuation reflected true value of land — 32 years between valuation date and date of resumption — Failure to show why superintendent's award inadequate — Sarawak Land Code (cap 81) s 56

This was a consolidated land reference under s 56 of the Sarawak Land Code. The subject lands in question (Lots 748 and 751) were owned by the objector herein. Pursuant to the inquiry under s 51 held on 16 November 2005, the respondent awarded RM223,836 (RM12 psm) for Lot 748 and RM91,910 (RM10 psm) for Lot 751. The objector however sought additional compensation of RM272,037.90 for Lot 748 and RM155,113.30 for Lot 751. The subject lands in question were subjected to s 47 notification on 19 April 1973 but the s 48 declaration was only posted 32 years later on 7 July 2005. The land was resumed by the government on 9 February 2006. Both the respondent's valuer and objector's valuer had made 19 April 1973 the relevant date for the valuation and made favourable adjustment to increase the compensation in view of the 32 years lapse between the date of valuation and the date the land owner received compensation. However, they used different methodology and arrived at significantly different results. The respondent's valuer referred to actual comparable sales in the area at the time of the s 47 notice. The objector's valuer, instead of using comparable sales of lands in the vicinity, used the superintendent awards and court awards from 1983 onwards.

Held, dismissing the objector's claim with costs:

(1) The basic land value of RM9,000 per hectare arrived at by the objector's valuer was not supported by any comparable sale. For that reason, the valuation of the objector's valuer did not reflect the true value of the land. The respondent's valuer's estimate of the market value was supported by comparable sales (see paras 4 & 6).

(2) The burden to show that the superintendent's award was inadequate lay on the objector. The respondent's valuer had used the conventional method in assessing the market value of the land. She had taken a suitable comparable sale from the time when the s 47 notice was gazetted in 1973 and made adjustments to the sale price to take into account the superior features of the subject lands. To make up for the loss of 32 years between the valuation date and the date of resumption, she had generously compounded 8%pa to the value of the land. The objector failed to show why the superintendent's award which accorded with the finding of the respondent's valuer was inadequate (see para 6); *Superintendent of Lands and Surveys, Sarawak v Aik Hoe & Co Ltd* [1966] 1 MLJ 243 referred.

[Bahasa Malaysia summary

Ini merupakan rujukan tanah yang digabungkan di bawah s 56 Kanun Tanah Sarawak. Tanah-tanah yang dipersoalkan (Lot-Lot 748 dan 751) dimiliki oleh pembantah. Menurut siasatan di bawah s 51 yang dijalankan pada 16 November 2005, responden mengawardkan RM223,836 (RM12 mps) untuk Lot 748 dan RM91,910 (RM10 mps) untuk Lot 751. Walau bagaimanapun, pembantah telah memohon pampasan tambahan sebanyak RM272,037.90 untuk Lot 748 dan RM155,113.30 untuk Lot 751. Tanah-tanah yang dipersoalkan telah tertakluk kepada pemberitahuan di bawah s 47 pada 19 April 1973 akan tetapi deklarasi di bawah s 48 telah dipaparkan 32 tahun kemudian pada 7 Julai 2005. Tanah tersebut telah diambil semula oleh pihak kerajaan pada 9 Februari 2006. Jurunilai bagi kedua-dua responden dan pembantah telah menetapkan 19 April 1973 sebagai tarikh yang relevan bagi penilaian dan telah membuat pengubahsuaian yang lebih baik untuk menaikkan pampasan berdasarkan 32 tahun yang telah luput di antara tarikh penilaian dan tarikh di mana pemilik tanah telah menerima pampasan. Walau bagaimanapun, mereka telah menggunakan perkaedahan yang berlainan dan telah mencapai keputusan yang nyata berbeza. Jurunilai responden telah merujuk kepada bandingan jualan sebenar pada masa pemberitahuan s 47 tersebut. Jurunilai pembantah tidak merujuk kepada bandingan jualan tanah di kawasan tersebut dan sebaliknya merujuk kepada award-award Penolong Penguasa dan mahkamah dari tahun 1983 dan berikutnya.

Diputuskan, menolak tuntutan pembantah dengan kos:

(1) Nilai asas tanah iaitu RM9,000 sehektar yang dicapai oleh jurunilai pembantah tidak disokong oleh sebarang bandingan jualan. Oleh sebab itu, penilaian oleh jurunilai pembantah tidak mencerminkan nilai

sebenar tanah tersebut. Anggaran yang dibuat oleh jurunilai responden mengenai nilai pasaran tersebut disokong oleh bandingan jualan (lihat perenggan 4 & 6).

(2) Beban untuk menunjukkan bahawa award oleh Penolong Penguasa itu tidak memadai adalah pada pihak pembantah. Jurunilai responden telah menggunakan kaedah konvensional dalam menaksir nilai pasaran tanah tersebut. Dia telah mengambil bandingan jualan yang sesuai semasa notis s 47 itu diwartakan pada 1973 dan telah membuat pengubahsuaian terhadap harga jualan untuk mengambilkira ciri-ciri utama tanah-tanah itu. Untuk menggantikan jangkamasa 32 tahun yang terbuang di antara tarikh penilaian dan tarikh pengambilan semula, dia dengan sebaik mungkin telah mengkompaun 8% setahun terhadap nilai tanah tersebut. Pembantah telah gagal untuk menunjukkan mengapa award oleh Penolong Penguasa yang mana diberikan mengikut pencarian jurunilai responden adalah tidak memadai (lihat perenggan 6); *Superintendent of Lands and Surveys, Sarawak v Aik Hoe & Co Ltd* [1966] 1 MLJ 243 dirujuk.]

Notes

For cases on award for acquisition of land, see 8(1) *Mallal's Digest* (4th Ed, 2010 Reissue) paras 1882–1929.

Cases referred to

Bertam Consolidated Rubber Co Ltd v Pemungut Hasil Tanah, Seberang Perai Utara, Butterworth [1989] 2 MLJ 178, HC (refd)

Superintendent of Lands and Surveys, Sarawak v Aik Hoe & Co Ltd [1966] 1 MLJ 243, FC (refd)

Legislation referred to

Sarawak Land Code (cap 81) ss 46, 47, 48, 51, 56, 60(1)(a)

Tony Ling (HC Lee) for the objector.
Dayang Jamilah (State Attorney General's Chambers) for the respondent.

Ravinthran Paramaguru JC:

INTRODUCTION

[1] This is a consolidated land reference under s 56 of the Sarawak Land Code. The subject lands in question are Lot 748 and 751, Block 5 Muara Tebas land district. Both lots are wholly owned by the objector herein. The

lands are under the category of mixed zone country land/suburban land. Lot 748 is 1.8 hectares whereas Lot 751 is 0.9 hectares. The lease on both properties are due to expire on 31 December 2036. Pursuant to the inquiry under s 51 held on 16 November 2005, the respondent (Superintendent of Land and Survey) awarded RM223,836 (RM12 psm) for Lot 748 and RM91,910 (RM10 psm) for Lot 751. The said amounts were accepted under protest by the objector. The additional compensation sought by the objector for Lot 748 is RM272,037.90. In respect of Lot 751, the additional compensation sought is RM155,113.30.

32 YEARS WAIT FOR RESUMPTION

[2] The subject lands in question were subjected to s 47 notification on 19 April 1973. At that time Bako peninsular, on which the subject lands were located, was only accessible by river. For some reason, the s 48 declaration was only posted 32 years later on 7 July 2005. The land was resumed by the government on 9 February 2006. This is the peculiar feature of the acquisition in this case. It has given rise to some difficulty in the valuation of the land. Section 60(1)(a) of the Sarawak Land Code says that the relevant date to determine market value is the date of the declaration under s 47 or the date of the posting of the declaration by the Minister under s 48 that the subject land is needed for the purpose of s 46. In the instant case, the relevant date is the date of the declaration under s 47 which is 19 April 1973. Both the respondent's valuer and objector's valuer have made 19 April 1973 the relevant date for the valuation. Both valuers have also attempted to make favourable adjustment to increase the compensation in view of the 32 years lapse between the date of valuation and the date the land owner received compensation. However, they used different methodology and arrived at significantly different results. I shall consider briefly here the methods they employed.

[3] The respondent's valuer referred to actual comparable sales in the area at the time of the section 47 notice. She considered four comparable sales of land sold between 1972 and 1974. She picked one of the sales, ie KOT 12545 as the most suitable comparable for the value of the land at the time of s 47 notice in 1973. This land was transacted at RM3,922 per hectare. She used this as a basis for her valuation. She also considered four sales of lands transacted between 2001 and 2005. She chose Lot 492 to get the base value of the land before the date of the s 48 notice. Her purpose is to compare the value of the land after having made upward adjustment for the lapse of 32 years since the s 47 notice was gazetted in 1973. KOT 12454 is 1.79 hectares

with a river frontage. The subject lands are inner lots. To compensate for the long gap between the date of valuation and the date of resumption during which the value of money would have depreciated, the government valuer added 8%pa to the base value of the land for the last 32 years. She also made adjustment for size and location as shown in the valuation analysis in the appendix to her report. She arrived at a value of RM100,000 per hectare for Lot 751 and RM120,000 for Lot 748.

[4] The objector's valuer on the other hand employed a different method although he used the comparison method. Instead of using comparable sales of lands in the vicinity, he used the superintendent awards and court awards from 1983 onwards. He used three superintendent awards in 1983 and three superintendent awards in 1993. He arrived at a basic land value of RM9,000 per hectare as at 1973. However, from his report it is clear that this value is not supported by the sale of any land in 1973. From this figure of RM9,000 per hectare, he made upward adjustment for depreciation of money and inflation for the last 32 years. He exhibited the inflation and consumer price index data from Bank Negara. Whether his calculation is accurate or otherwise, as pointed by the assessors, his base value of RM9,000 per hectare in 1973 is not supported by any comparable sale as is the convention when using the comparison method. The principle is that arms length comparable sales are the most accurate indicator of market value. It is even more accurate than the opinion of experts. In *Bertam Consolidated Rubber Co Ltd v Pemungut Hasil Tanah, Seberang Perai Utara, Butterworth* [1989] 2 MLJ 178, Edgar Joseph J said as follows:

> It is well settled that the three recognised methods of valuation of land compulsorily acquired under acquisition legislation are these:
>
> (a) the opinions of expert valuers;
>
> (b) the price paid, within a reasonable time, in bona fide transactions of purchases of the land acquired, or of the lands adjacent to the land acquired and possessing similar advantages; and
>
> (c) a certain number of years' purchase of the actual or immediately prospective profit from the lands acquired. If authority is needed, I would refer to *Harish Chundar Neogy v Secretary of State* 11 CWN 876 (refd).
>
> I have two general observations to make regarding the methods of valuation aforesaid.
>
> First of all, the most reliable guide in determining fair market value is, of course, evidence of sale of the same or similar land in the neighbourhood, due allowance having been made for the particular circumstances of each case. Secondly, as to the evidence of experts, I can do no better than refer to and adopt the view expressed in *Harish Chundar's Neogy v Secretary of State* 11

CWN 876 (refd) at p 877, namely, that their 'estimates are undoubtedly some evidence but their value is not great, as expert evidence is liable to err, unless it is supported by or coincides with other evidence'. A

[5] The objector's valuer used the superintendent awards although at least four comparable sales were available in the 1973 period as shown in the valuation report of the respondent's valuer. The two main criticism of the objector on the comparables used by the respondent's valuer does not seem justified. Learned counsel for the objector submitted that KOT 12545 had river frontage as compared to the subject lands which are inner lots. He said that this means that the comparable could be swampy land or land that is prone to flooding. I should think that this criticism is mere speculation as there is no evidence if this was the case in 1973. In fact at p 12 (second last paragraph) of the objector's valuation report itself, there is a statement that land with river frontage could enjoy better value. The other criticism is that the second comparable sale of land, used by the respondent's valuer, has no road access. However, it must be noted that upward adjustment had been made for the superior access of the subject lands. B C D

[6] Finally I must consider the opinion of the assessors. Both assessors, as is the practice, worked independently of each other in delivering their opinion to the court. Both are unanimous in their view that the basic land value of RM9,000 per hectare arrived at by the objector's valuer is not supported by any comparable sale. For that reason, they concluded that the valuation of the objector's valuer does not reflect the true value of the land. They also opined that the respondent's valuer's estimate of the market value is supported by comparable sales. Their opinion accords with my own finding that the valuation of the objector's valuer is not reflective of the true market value for the same reasons. I bear in mind that the burden to show that the superintendent's award is inadequate lies on the objector (*Superintendent of Lands and Surveys, Sarawak v Aik Hoe & Co Ltd* [1966] 1 MLJ 243). The respondent's valuer has used the conventional method in assessing the market value of the land in this case. She has taken a suitable comparable sale from the time when the s 47 notice was gazetted in 1973. She had made adjustments to the sale price to take into account the superior features of the subject lands. To make up for the loss of 32 years between the valuation date and the date of resumption, she had generously compounded 8%pa to the value of the land. Apart from some criticism on some of the features of the comparable sales which I had addressed, the objector had failed to show why the superintendent's award which accords with the finding of the respondent's valuer is inadequate. In the premises, I dismiss the claim of the objector with E F G H I

costs in both cases which had been consolidated. I also order that the costs include the RM100 fee per day to each of the two assessors.

Objector's claim dismissed with costs.

Reported by Kanesh Sundrum